IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.396 OF 2004

Mrs.Jaya Baban Kadam : Applicant.

versus.

The State of Maharashtra : Respondent.

Mr.A.Majeed Memon for the applicant.

Mr.A.S.Gadkari, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 13th August 2004.

P.C.

1. Heard Mr.Memon, advocate, for the applicant/accused and Mr.Gadkari, the learned APP for the State. This is an application for bail. Accused/applicant is a lady and her husband Baban Kadam, Asstt.Commissioner, SID, Mumbai, are the accused along with others in, what is known as, MPSC scam. Husband Baban Kadam is arrested on 2/7/2002 and this accused/applicant is arrested on 18/9/2003. She will be completing one year in

detention in September 2004.

2. The case against the present applicant is that she assisted her husband Baban Kadam in investing and distributing assets or cash collected by Baban Kadam by taking bribe or illegal money from the students appearing for the examination of MPSC. The learned APP pointed out that amount of Rs.1.5 crores is involved and the present accused is alleged to have floated bogus trust in the name of her monther-in-law and collected funds from others by cheques after giving them in cash in lieu thereof; open FDRs in different names. He also pointed out that supplementary statement of certain student witnesses were recorded and they have stated that this applicant was present when the amount of bribe for getting through examination was paid to her husband Baban Kadam.

3. On the other hand, it was pointed out by Mr.Memon, counsel appearing for the applicant, that firstly this applicant/accused is a lady; she is in custody since last 11 months or so; not a single witness of the prosecution, whose statements were recorded so far, alleges that

anything was paid to this applicant directly or indirectly.

4. According to him, mere presence of the wife/applicant at the time husband collecting money could not be said to be taking part in the crime. So far as floating of trust and collection of money and investment thereof are concerned, according to Mr.Memon, the wife assisted her husband in distribution of illegal accumulated assets, then her detention for 11 months by this time is more sufficient. He also pointed out that last and final charge sheet has been filed. There is no apprehension that the accused/applicant will tamper with the witnesses or with the records all of which are in the custody of the police. Therefore, he prayed that looking to all these aspects and with passive role of the applicant, the bail should be granted to her.

5. I have given my anxious consideration to the submissions made by both the sides. The most important aspect that goes in favour of the applicant/accused is that not a single witness of the prosecution has named her as a person

receiving bribe or illegal gratification or collecting money for and on behalf of her husband. It may be that she has assisted her husband in distribution of assets and investment thereof in the name of the trust and in other forms, but when the final charge sheet is filed and when she is in custody since last 11 months or so, she is entitled for bail. Hence the following order :-

: ORDER :

1. The application is allowed.

2. The Applicant/accused be released on her P.R. bond of Rs.25,000/- with one solvent surety in the like amount.

3. The Applicant/accused shall not leave Bombay without permission of this Court and, if she has any passport, she will surrender the same to the Investigating Agency before she is released.

4. The Applicant/accused shall attend the concerned Police Station once in a fortnight for six months and thereafter as and when called.

5. All concerned parties to act upon ordinary copy of this order duly authenticated by

the Court Sheristedar.

[D.G.DESHPANDE]

13/08/2004 JUDGE.